

## Federal Acquisition Regulation

## 9.207

time frames specified in 5.203 when applicable.

[50 FR 35476, Aug. 30, 1985, as amended at 53 FR 34227, Sept. 2, 1988]

### 9.206-2 Contract clause.

The contracting officer shall insert the clause at 52.209-1, Qualification Requirements, in solicitations and contracts when the acquisition is subject to a qualification requirement.

[53 FR 34227, Sept. 2, 1988]

### 9.206-3 Competition.

(a) *Presolicitation.* If a qualification requirement applies to an acquisition, the contracting officer shall review the applicable QPL, QML, or QBL or other identification of those sources which have met the requirement before issuing a solicitation to ascertain whether the number of sources is adequate for competition. (See 9.204(a) for duties of the agency activity responsible for establishment of the qualification requirement.) If the number of sources is inadequate, the contracting officer shall request the agency activity which established the requirement to—

(1) Indicate the anticipated date on which any sources presently undergoing evaluation will have demonstrated their abilities to meet the qualification requirement so that the solicitation could be rescheduled to allow as many additional sources as possible to qualify; or

(2) Indicate whether a means other than the qualification requirement is feasible for testing or demonstrating quality assurance.

(b) *Postsolicitation.* The contracting officer shall submit to the agency activity which established the qualification requirement the names and addresses of concerns which expressed interest in the acquisition but are not included on the applicable QPL, QML, or QBL or identified as meeting the qualification requirement. The activity will then assist interested concerns in meeting the standards specified for qualification (see 9.202(a) (2) and (4)).

[50 FR 35476, Aug. 30, 1985, as amended at 60 FR 34737, July 3, 1995]

### 9.207 Changes in status regarding qualification requirements.

(a) The contracting officer shall promptly report to the agency activity which established the qualification requirement any conditions which may merit removal or omission from a QPL, QML, or QBL or affect whether a source should continue to be otherwise identified as meeting the requirement. These conditions exist when—

(1) Products or services are submitted for inspection or acceptance that do not meet the qualification requirement;

(2) Products or services were previously rejected and the defects were not corrected when resubmitted for inspection or acceptance;

(3) A supplier fails to request reevaluation following change of location or ownership of the plant where the product which met the qualification requirement was manufactured (see the clause at 52.209-1, Qualification Requirements);

(4) A manufacturer of a product which met the qualification requirement has discontinued manufacture of the product;

(5) A source requests removal from a QPL, QML, or QBL;

(6) A condition of meeting the qualification requirement was violated; e.g., advertising or publicity contrary to 9.204(h)(5);

(7) A revised specification imposes a new qualification requirement;

(8) Manufacturing or design changes have been incorporated in the qualification requirement;

(9) The source is on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (see subpart 9.4); or

(10) Performance of a contract subject to a qualification requirement is otherwise unsatisfactory.

(b) After considering any of the above or other conditions reasonably related to whether a product or source continues to meet the standards specified for qualification, an agency may take appropriate action without advance notification. The agency shall, however, promptly notify the affected parties if a product or source is removed from a QPL, QML, or QBL, or will no longer be identified as meeting the standards

specified for qualification. This notice shall contain specific information why the product or source no longer meets the qualification requirement.

[50 FR 35476, Aug. 30, 1985, as amended at 53 FR 34227, Sept. 2, 1988; 56 FR 15149, Apr. 15, 1991; 60 FR 33065, June 26, 1995]

### **Subpart 9.3—First Article Testing and Approval**

#### **9.301 Definition.**

*Approval*, as used in this subpart, means the contracting officer's written notification to the contractor accepting the test results of the first article.

[48 FR 42142, Sept. 19, 1983, as amended at 66 FR 2128, Jan. 10, 2001]

#### **9.302 General.**

First article testing and approval (hereafter referred to as testing and approval) ensures that the contractor can furnish a product that conforms to all contract requirements for acceptance. Before requiring testing and approval, the contracting officer shall consider the—

- (a) Impact on cost or time of delivery;
- (b) Risk to the Government of foregoing such test; and
- (c) Availability of other, less costly, methods of ensuring the desired quality.

#### **9.303 Use.**

Testing and approval may be appropriate when—

- (a) The contractor has not previously furnished the product to the Government;
- (b) The contractor previously furnished the product to the Government, but—
  - (1) There have been subsequent changes in processes or specifications;
  - (2) Production has been discontinued for an extended period of time; or
  - (3) The product acquired under a previous contract developed a problem during its life.
- (c) The product is described by a performance specification; or
- (d) It is essential to have an approved first article to serve as a manufacturing standard.

#### **9.304 Exceptions.**

Normally, testing and approval is not required in contracts for—

- (a) Research or development;
- (b) Products requiring qualification before award (e.g., when an applicable qualified products list exists (see subpart 9.2));
- (c) Products normally sold in the commercial market; or
- (d) Products covered by complete and detailed technical specifications, unless the requirements are so novel or exacting that it is questionable whether the products would meet the requirements without testing and approval.

#### **9.305 Risk.**

Before first article approval, the acquisition of materials or components, or commencement of production, is normally at the sole risk of the contractor. To minimize this risk, the contracting officer shall provide sufficient time in the delivery schedule for acquisition of materials and components, and for production after receipt of first article approval. When Government requirements preclude this action, the contracting officer may, before approval of the first article, authorize the contractor to acquire specific materials or components or commence production to the extent essential to meet the delivery schedule (see Alternate II of the clause at 52.209-3, First Article Approval—Contractor Testing, and Alternate II of the clause at 52.209-4, First Article Approval—Government Testing. Costs incurred based on this authorization are allocable to the contract for (1) progress payments and (2) termination settlements if the contract is terminated for the convenience of the Government.

#### **9.306 Solicitation requirements.**

Solicitations containing a testing and approval requirement shall—

- (a) Provide, in the circumstance where the contractor is to be responsible for the first article approval testing—
  - (1) The performance or other characteristics that the first article must meet for approval;